



Signed and Filed: June 12, 2023

*Dennis Montali*

DENNIS MONTALI  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re: ) Bankruptcy Case  
PG&E CORPORATION, ) No. 19-30088-DM  
 ) Chapter 11  
- and - ) Jointly Administered  
PACIFIC GAS AND ELECTRIC COMPANY, )  
 )  
Reorganized Debtors. ) **HEARING SCHEDULED**  
 ) Date: July 11, 2023  
☐ Affects PG&E Corporation ) Time: 10:00 AM  
☐ Affects Pacific Gas and ) Via Video/Teleconference  
Electric Company ) [www.canb.uscourts.gov/calendars](http://www.canb.uscourts.gov/calendars)  
☒ Affects both Debtors )  
 )  
\* All papers shall be filed in )  
the Lead Case, No. 19-30088 (DM). )  
 )  
 )

**MEMORANDUM DECISION ON MOTION FOR PARTIAL SUMMARY JUDGMENT AND  
COUNTER-MOTION FOR SUMMARY JUDGMENT**

**I. Introduction**

On May 9, 2023, the court held a hearing on the Amir Shahmirza, Responsible Person for Creditor Komir, Inc. (hereinafter "Komir") Motion for Partial Summary Judgment of Issues in Reorganized Debtors Objection to Claim #2090 and

1 *Claimant's Response Thereto* (Dkt. 13478) (the "Partial Motion")  
2 and Reorganized Debtors' (hereinafter "PG&E") *PG&E's Opposition*  
3 *to Motion for Partial Summary Judgment and Counter-Motion for*  
4 *Summary Judgment* (Dkt. 13567) (the "Counter-MSJ"). At the  
5 conclusion of the argument the court took both matters under  
6 submission. For the reasons stated below, the court will GRANT  
7 Komir's Partial Motion and DENY PG&E's Counter-MSJ.

## 8 **II. Undisputed Factual Background**

9 The facts of this matter center on a two-acre parcel of  
10 real property located at 800 Walnut Avenue, San Bruno,  
11 California (the "Komir Property"), that is a portion of land  
12 formerly known as Parcel 2. Parcel 2 was one of multiple  
13 "Parcels" at and around the intersection of what is now Highway  
14 101 and Interstate 380, near the San Francisco International  
15 Airport.

16 In 1910 and 1923, PG&E acquired from Mills Estate  
17 Incorporated a total of four easements over Parcel 2, to place  
18 and maintain electricity transmission towers and lines. By 1943,  
19 PG&E had erected transmission lines that cross over the Komir  
20 Property. By 1973, the City and County of San Francisco  
21 ("CCSF") owned the Parcels.

22 On May 7, 1973, the State of California filed a Complaint  
23 in Eminent Domain ("Complaint") (Partial Motion, Exh. 3) that  
24 named CCSF, PG&E, and a variety of other entities as defendants.  
25 The Complaint explicitly stated that "public interest and  
26 necessity require the acquisition of certain real property in  
27 fee simple absolute **unless a lesser estate is described herein**  
28 for State highway purposes . . ." (emphasis added). The

1 Complaint goes on to separately list each affected Parcel as an  
2 exhibit which describes that Parcel's boundaries, and any  
3 easements within that parcel. The exhibit for Parcel 2 contains  
4 only a description of its boundaries, and no easements are  
5 described.

6 A Judgment of Condemnation (the "Judgment") and Final Order  
7 of Condemnation (the "Final Order") (Partial Motion, Exhs. 6 &  
8 7) were entered simultaneously on February 11, 1983.<sup>1</sup> The Final  
9 Order states that all of the Parcels shall be taken in eminent  
10 domain "in fee simple absolute, unless a lesser estate is  
11 described." As before, the description of Parcel 2 contains no  
12 mention of any easements.

13 In 1987, the State of California sold the Komir Property to  
14 a third party, who then sold it to Komir in 2000.

15 Between 2000 and 2018 there were no disputes between PG&E  
16 and Komir that are relevant to the present controversies. In  
17

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18 <sup>1</sup> While the caption of the Complaint lists every Defendant  
19 individually by name, the captions of the Judgment and Final  
20 Order do not. Instead, they list the Defendants as "City and  
21 County of San Francisco, a municipal corporation, et al." This  
22 quirk is unexplained by either party. However, PG&E does not  
argue that it was dropped from the Complaint or that it is not  
bound by the outcome of the matter.

23 Another unexplained quirk is that a second eminent domain  
24 lawsuit was filed and consolidated prior to the original  
25 lawsuit's completion. The Judgment and Final Order are double-  
26 captioned (each naming the Plaintiff and Defendants identically  
27 as described above), with the first caption containing the same  
28 case number as the Complaint and concerning the same parcels as  
the Complaint, and the second lawsuit listing a second case  
number and describing new affected Parcels. The boundaries  
described for Parcel 2 in the Complaint are unchanged in the  
Judgment and Final Order.

1 fact, Komir consented to PG&E activities, leading to the court's  
2 conclusion that PG&E's easement rights were at most via a  
3 consensual easement.

4 In 2018, PG&E began construction of new transmission towers  
5 over the Komir Property at considerably lower height than  
6 existing lines. In fact, in March 2018 the parties entered into  
7 a Temporary Construction Easement, in which PG&E agreed to pay  
8 Komir \$9,000 per month in exchange for rights of ingress and  
9 egress on a portion of the Komir Property to complete  
10 construction adjacent to the Komir Property. Shortly  
11 thereafter, PG&E removed existing transmission towers and began  
12 construction of new towers and lines of a larger size and lower  
13 height on the Komir Property. Within months of the  
14 construction, Komir filed suit in San Mateo Superior Court  
15 against PG&E for trespass and other causes of action related to  
16 the new transmission lines. The lawsuit was stayed by PG&E's  
17 bankruptcy filing in 2019. Komir duly filed a Proof of Claim  
18 related to the causes of action. After mediation related to the  
19 claim was unsuccessful, PG&E filed an Objection to the Proof of  
20 Claim (Dkt. 12130), leading to the procedural underpinnings of  
21 the MSJ and Counter-MSJ.

### 22 **III. Summary Judgment Standard**

23 On a motion for summary judgment, the court must determine  
24 whether, viewing the evidence in the light most favorable to the  
25 nonmoving party, there are any genuine issues of material fact  
26 as to any claim, part of claim, defense, or part of defense.  
27 *Simo v. Union of Needletrades, Indus. & Textile Employees*, 322  
28 F.3d 602, 609-10 (9th Cir. 2003); Fed. R. Civ. P. 56. Summary

1 judgment against a party is appropriate when the pleadings,  
2 depositions, answers to interrogatories, and admissions on file,  
3 together with the affidavits, if any, show that there is no  
4 genuine issue as to any material fact and that the moving party  
5 is entitled to judgment as a matter of law. Fed. R. Civ. P. 56.  
6 It is within a court's discretion to grant summary judgment in  
7 favor of the nonmovant. Fed. R. Civ. P. 56(f)(1); *Gospel*  
8 *Missions of America v. City of Los Angeles*, 328 F.3d 548, 553  
9 (9th Cir. 2003) (court may enter summary judgment for nonmovant  
10 if the movant had "full and fair opportunity to ventilate the  
11 issues involved in the matter" and the issues adjudicated were  
12 present in the original motion.) (citations omitted).

#### 13 **IV. Komir's Partial Motion**

14 The Partial Motion seeks summary judgment only as to one  
15 issue: whether PG&E's easements to place and maintain  
16 transmission lines on Parcel 2 were extinguished by the Final  
17 Order. The court concludes that the easements were indeed  
18 extinguished by the Final Order.

19 The basis for Komir's argument, and for the court's  
20 conclusion, is short and simple: the Final Order condemning the  
21 real property that includes all of Parcel 2 (and therefore the  
22 entirety of the Komir Property) to the State of California was  
23 in fee simple and subject only to easements defined in the Final  
24 Order. PG&E's easements were not defined in the Final Order and  
25 were thus extinguished.

26 PG&E points to the following language set forth in the  
27 Final Order regarding relocation payments owed PG&E to support  
28 its argument that its easements were not extinguished:

1 [a]ll costs for relocation of Pacific Gas and  
2 Electric Company transmission lines and their  
3 appurtenances and natural gas lines and their  
4 appurtenances, as required for freeway  
5 construction on Airport property, shall be  
6 pursuant to applicable state law and/or Master  
7 Contracts in effect between the State and  
8 Pacific Gas and Electric Company and will be  
9 without cost to the CITY AND COUNTY OF SAN  
10 FRANCISCO.

11 PG&E then presents a copy of a Master Contract between the  
12 State of California and PG&E, to which Komir objects on an  
13 evidentiary basis. That Master Contract, taken by the court to  
14 be the Master Contract referenced in the Final Order, "governs  
15 relocation of PG&E facilities in physical conflict with freeway  
16 projects. Under the Master Contract, Caltrans may order the  
17 relocation of PG&E facilities to accommodate freeway projects,  
18 and the cost is allocated between the parties in accordance to  
19 the nature of PG&E's land rights." (Counter-MSJ at 4). The  
20 Master Contract makes specific references to the payment for new  
21 and necessary right-of-way easements when utility lines are to  
22 be moved, but, reasonably, does not reference how the Master  
23 Contract would interplay with an eminent domain lawsuit.  
24 Despite the Master Contract's silence, PG&E argues that because  
25 it was not asked nor paid to move its transmission lines that  
26 cross over Parcel 2 pursuant to the applicable Master Contract  
27 in effect between Caltrans and PG&E, those easements were not  
28 extinguished by the Final Order. This argument does not appear  
to have any legal or factual basis.

First, the Final Order explicitly sets aside a utility  
easement for a PG&E natural gas line in Parcel 6B, which

1 illustrates that if any easements were meant to have been  
2 maintained, they would have been within the language of the  
3 Final Order.

4       Next, PG&E does not set forth any facts to establish, or at  
5 least put into dispute, whether Parcel 2 is on what is called in  
6 the Final Order "Airport Property." There is no definition of  
7 "Airport Property" anywhere else in either party's papers.  
8 Without any facts regarding the boundaries of "Airport  
9 Property," the court assumes, without objection by either party,  
10 that Parcel 2 was not on "Airport Property" and thus the  
11 transmission lines running over Parcel 2 did not need to be  
12 moved.

13       Finally, PG&E does not explain how or why not moving (and  
14 not being compensated to move) transmission lines pursuant to  
15 the Master Contract would have any effect on the underlying  
16 easement, especially when the Master Contract is silent  
17 regarding its effect on any existing easement.

18       One final ambiguity is resolved in Komir's favor. While  
19 the Complaint explicitly states that the State plans to take the  
20 property described "unless a lesser estate is described herein,"  
21 the Final Order only states that the State takes the real  
22 property "in fee simple absolute, unless a lesser estate is  
23 described" without the word "herein." PG&E argues that this  
24 means that lesser estates described in other recordings, such as  
25 its initial easement recordings from the 1910 and 1923, remained  
26 in place after the Final Order was entered and recorded.

27       Any ambiguity created by the absence of the word "herein"  
28 does not rise to the level of a genuine dispute. The Final

1 Order is itself a final recorded document as to real property  
2 that explicitly states, in all incarnations, that the Plaintiff  
3 shall take the real property described in fee simple absolute,  
4 and then parcel by parcel described what easements, if any,  
5 remain. An argument that the State deviated so entirely from  
6 this purpose by the deletion of the word "herein" in the Final  
7 Order, without more evidence than merely pointing out the loss  
8 of the word, is not persuasive and does not establish the  
9 existence of a material fact in dispute on the record presented.

10 The court has addressed PG&E's claims that its easements  
11 were not extinguished by the Final Order. The court must also  
12 address how PG&E did not even come close to engaging with  
13 Komir's persuasive arguments backed by binding case law and  
14 impressive secondary authority that the Final Order did in fact  
15 extinguish the easements.

16 Komir begins with Cal. Civ. Code § 811, which states in  
17 part that a servitude is extinguished by the destruction of the  
18 servient tenement.

19 Komir also cites *Burkhart v. Unites States*, 227 F.2d 659  
20 (9th Cir. 1955) to demonstrate the basic premise of eminent  
21 domain law. In *Burkhart*, the Ninth Circuit held that the  
22 enabling eminent domain statute made clear that the government  
23 had to designate expressly any exceptions to a fee simple  
24 taking, and went on to state "[t]he taking was not of the rights  
25 of designated persons in the property but in the property itself  
26 . . . Consequently when the Government took the fee simple title  
27 subject only to highway easements, it took all the lesser  
28 estates." *Burkhart*, 227 F.2d at 661-662 at fn.2.



1 Komir then cites *United States v. 32.42 Acres of Land*, F.3d  
2 1030, (9th Cir. 2012) which follows the holding and reasoning of  
3 *Burkhart* to reiterate that lesser estates are "obliterated"  
4 unless "specifically excepted" and a new title is created in an  
5 eminent domain proceeding. Though the cases involve federal  
6 eminent domain proceedings, Komir argues that the facts and law  
7 are paralleled to the state court eminent domain proceeding  
8 here. Given the Declaration of Necessity upon which the eminent  
9 domain proceeding was based, and the explicit text of both the  
10 Complaint and Final Order, the court agrees and accepts the  
11 cases as persuasive. More persuasive is the lack of any  
12 relevant argument by PG&E regarding California eminent domain  
13 law.

14 **V. PG&E's Counter-MSJ**

15 In addition to PG&E's arguments addressed above, PG&E seeks  
16 summary judgment on three alternative claims: (1) that even if  
17 the easements were extinguished in 1983, PG&E's continued use of  
18 the transmission lines entitles it to an easement by  
19 prescription; (2) that Komir's 2018 lawsuit is barred by the  
20 statute of limitations; and (3) Komir's claims arising from the  
21 2018 lawsuit were discharged in PG&E's 2001 bankruptcy. All  
22 three arguments turn on the same material facts that the court  
23 finds not to be in dispute and operate in Komir's favor.

24 First, as to PG&E's claim of prescriptive easement, PG&E  
25 merely names the elements that would entitle a party to a  
26 determination that it does have a prescriptive easement over  
27 another's property ("open, notorious and peaceable use, adverse  
28 and under a claim of right, for the statutory period of five

1 years." *Guerra v. Packard*, 236 Cal. App. 2d 272, 288 (1965))  
2 and simply stating, without anything further, that PG&E meets  
3 all five criteria because transmission lines have been in  
4 operation on the Komir Property for decades. However, this  
5 glosses over the reality of PG&E's construction of new, lower  
6 height transmission lines in 2018. Komir's lawsuit relates  
7 explicitly to this construction and was filed within months of  
8 the changes that occurred earlier that year. That the use and  
9 rights changed in 2018 means PG&E cannot prove any type of use  
10 of those rights over the minimum five-year period for a  
11 prescriptive easement to be established.

12 The second and third arguments fail for the same reason.  
13 Without more facts from PG&E, the court could not determine as a  
14 matter of law that Komir acted beyond the statute of limitations  
15 or had that his state court causes of action were discharged in  
16 2001, when the acts prompting Komir's 2018 lawsuit also occurred  
17 in 2018. For those reasons the court might well have granted a  
18 cross-motion for summary judgment had Komir sought one.

#### 19 **VI. PG&E's Arguments at Hearing**

20 At the hearing on May 9, PG&E presented a new argument not  
21 stated in the Counter-MSJ: PG&E was not a named Defendant in  
22 the original Complaint as to Parcel 2, and thus its easements as  
23 it relates to Parcel 2 were outside of the Complaint at all  
24 times.

25 The court will disregard PG&E's troubling presentation of  
26 this novel argument that it was not a defendant as to Parcel 2,  
27 affording no opportunity for Komir to meaningfully respond  
28 before the hearing.

1 Taking this argument on its face, it fails as a matter of  
2 law. Section VII of the Complaint states:

3 The names of all owners of and claimants to  
4 the property sought to be acquired herein,  
5 **insofar as known to plaintiff**, are  
6 hereinafter set forth in this paragraph.  
7 Each defendant named has, or claims to have,  
8 some right, title, or interest in or to the  
9 parcels of real property heretofore  
10 described. **For the convenience of the court**  
11 **and parties, and not as allegations to which**  
12 **plaintiff intends to be bound**, plaintiff has  
13 set out the name of each defendant and  
14 opposite each name a statement of the  
15 respective interest in said parcel.  
16 (emphasis added)

17 The Complaint then goes on to list, by Parcel or group of  
18 Parcels, the name of the defendant and type of interest held by  
19 that defendant. PG&E is listed as a defendant with a right of  
20 way interest in Parcels 5A and 5B, but not as a defendant with  
21 any interest in Parcel 2.

22 The plain text of the Complaint itself states that the list  
23 of Defendants per Parcel was a matter of convenience to the  
24 court and parties, and not allegations regarding every interest  
25 in each party to which the State of California intended to be  
26 bound. This was a Complaint in eminent domain, an in rem  
27 proceeding meant to take each parcel of land in fee simple,  
28 unless otherwise stated within the Complaint itself. The plain  
text of the Complaint shows that the State intended to take all  
of Parcel 2, with no easement described therein. PG&E cannot  
now purport to prevail in the face of a Complaint that  
explicitly stated its list matching Defendants to specific

1 portions of the Parcel and noting that it was not binding on the  
2 Plaintiff.

3 **VII. Conclusion**

4 For the foregoing reasons, the court GRANTS Komir's Partial  
5 Motion and DENIES PG&E's Counter-MSJ. The court further STRIKES  
6 PG&E's late filed declarations and pleadings as requested, for  
7 being filed outside the agreed-upon and ordered filing schedule.  
8 Komir's evidentiary objections to the Counter-MSJ are well  
9 considered, but as the inclusion of such evidence was not  
10 necessary to the court's ruling, the objections are OVERRULED as  
11 moot.

12 The court is concurrently issuing Orders on those motions,  
13 consistent with this Memorandum Decision.

14 A further status conference on the matter is HEREBY SET for  
15 July 11, 2023, at 10:00 AM.

16  
17 **\*\*END OF MEMORANDUM DECISION\*\***  
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